(3)

No. 92-1196

In The

Supreme Court of the United States

October Term, 1993

WALDEMAR RATZLAF AND LORETTA RATZLAF,

Petitioners,

vs.

UNITED STATES,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

JOINT APPENDIX

STEPHEN ROBERT LACHEEN
STEPHEN ROBERT LACHEEN & ASSOCIATES
3100 Lewis Tower Building
15th and Locust Streets
Philadelphia, Pennsylvania 19102
(215) 735-5900

Counsel for Petitioners

DREW S. DAYS, III
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

Counsel for Respondent

Petition For A Writ Of Certiorari Filed January 4, 1993
Certiorari Granted April 26, 1993

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

RELEVANT DOCKET ENTRIES

United States v. Waldemar Ratzlaf and Loretta Ratzlaf

11/20/90	1	Indictment filed
04/9/91	40	Beginning of jury trial
04/17/91	50	Defendants' Requested Jury Instructions
	52	Defendants' Memorandum Re "Willfulness" Element Of 31 U.S.C. § 5322(a)
	53	Defendants' Requested Jury Instructions
04/18/91	54	Judgment of acquittal (Def. Hunt) on Counts Two and Three
04/24/91	65-68	Verdict (Hunt), not guilty all remaining counts
04/24/91	69-74	Verdict (Waldemar Ratzlaf), guilty Count One through Six
04/24/91	75-80	Verdict (Loretta Ratzlaf), guilty, Counts One and Six, not guilty, Count Two – Five
07/10/91	86	Joint Notice of Appeal
07/12/91	88	Judgment and Commitment Order re Loretta Ratzlaf
	89	Judgment and Commitment Order re Waldemar Ratzlaf
08/14/91	91a	Notice of Appeal

LELAND E. LUTFY
United States Attorney
JEFFREY B. SETNESS
Assistant United States Attorney
Federal Building & Courthouse
300 Booth Street, Room 2032
Reno, Nevada 89509
Tele: 702-784-5438

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, v. WALDEMAR RATZLAF, LORETTA RATZLAF, and RON HUNT, Defendants.	) Criminal No. N-90-58-ECR INDICTMENT FOR VIOLATION OF: TITLE 18, UNITED STATES CODE, SECTION 371 – Conspiracy – (Count One) TITLE 31, UNITED STATES CODE, SECTIONS 5324(3) and 5322(a) – Structuring of Financial Transactions to Avoid Currency Reporting Requirements – (Counts Two, Three, Four, and Five)

TITLE 18, UNITED STATES CODE, SECTION 1952(a)(3) – Interstate Travel in Aid of Racketeering – (Count Six)

TITLE 18, UNITED STATES CODE, SECTION 2 – Aiding and Abetting

(Filed Nov. 20, 1990)

THE GRAND JURY CHARGES THAT:

COUNT ONE
(Conspiracy)

1. At all times relevant to this Indictment, Title 31, United States Code, Section 5313(a), and Title 31, Code of Federal Regulations, Section 103.22, required that a financial institution file a Currency Transaction Report (Internal Revenue Service Form 4789) with the Internal Revenue Service for each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involved a transaction in currency of more than $10,000.

2. On or about October 27, 1988, in the State and Federal District of Nevada and elsewhere,

WALDEMAR RATZLAF,
LORETTA RATZLAF,
and
RON HUNT,

defendants herein, and others known and unknown to the Grand Jury, did willfully and knowingly combine, conspire, confederate, and agree together and with each other and with others known and unknown to the Grand Jury, to:

a. Knowingly and willfully, for the purpose of evading the reporting requirements of Title 31, United States Code, Section 5313(a), and Title 31, Code of Federal Regulations, Section 103.22(a), structure and assist in the structuring of transactions with one or more domestic financial institutions, in violation of Title 31, United States Code, Sections 5324(3) and 5322(a); and

b. Defraud the United States by impeding, impairing, obstructing, and defeating the lawful governmental function of the Internal Revenue Service of collecting data and reports of currency transactions of more than $10,000 for the purpose of detecting and investigating violations of criminal laws.

THE GOAL OF THE CONSPIRACY

3. The goal of the conspiracy was to conceal the amount of WALDEMAR RATZLAF'S income and gambling activity from the Internal Revenue Service. WALDEMAR RATZLAF and LORETTA RATZLAF, with the assistance of RON HUNT, attempted to attain this goal by making payments to the High Sierra Casino in such a manner as to avoid the reporting requirements related to currency transactions in excess of $10,000.

MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

4. Among the means by which the defendants would and did carry out the conspiracy were the following:

a. During the years 1986, 1987, and 1988, WALDEMAR RATZLAF gambled large sums of money at Caesar's Lake Tahoe and the High Sierra Casino, yet on their individual income tax returns for the years 1986 and 1987, WALDEMAR RATZLAF and LORETTA RATZLAF failed to report any amounts related to gambling.

b. In October 1988, WALDEMAR RATZLAF owed the High Sierra Casino $160,000. On October 27, 1988, WALDEMAR RATZLAF and LORETTA RATZLAF attempted to make a currency payment in excess of $10,000 on WALDEMAR RATZLAF'S $160,000 gambling debt.

c. On October 27, 1988, a High Sierra Casino employee informed WALDEMAR RATZLAF and LORETTA RATZLAF that, if they were [sic] make a currency payment to the casino in excess of $10,000, the casino would be required to report this currency transaction to governmental authorities.

d. On October 27, 1988, there was a discussion between WALDEMAR RATZLAF and LORETTA RATZLAF and a High Sierra Casino employee concerning how the RATZLAFS could make a payment on WALDEMAR RATZLAF'S gambling debt without the casino having to report the transaction to governmental authorities.

e. On October 27, 1988, WALDEMAR RATZLAF and LORETTA RATZLAF were informed by a High Sierra Casino employee that if WALDEMAR RATZLAF were to make a payment on his casino debt with a check then the casino would not have to report the transaction to governmental authorities.

f. On October 27, 1988, WALDEMAR RATZLAF and LORETTA RATZLAF were informed by RON HUNT to have the checks made payable to "Resorts Reservations".

g. On October 27, 1988, the High Sierra Casino limousine was made available to WALDEMAR RATZLAF and LORETTA RATZLAF so that RATZLAFS could go to financial institutions in the Lake Tahoe area to obtain a check or checks that were going to be used to make a payment on WALDEMAR RATZLAF'S gambling debt to the High Sierra Casino.

h. On October 27, 1988, High Sierra Casino Cage Manager, RON HUNT agreed to accompany WALDEMAR RATZLAF AND LORETTA RATZLAF to these financial institutions in the Lake Tahoe area.

i. On October 27, 1988, WALDEMAR RATZLAF, LORETTA RATZLAF, and RON HUNT travelled in the High Sierra Casino limousine to various financial institutions in the Lake Tahoe area.

j. On October 27, 1988, WALDEMAR RATZLAF and LORETTA RATZLAF, with currency, purchased eight $9,500 cashier's checks totalling $76,000 at five different financial institutions all made payable to Resorts Reservations.

k. On October 27, 1988, RON HUNT verbally assisted WALDEMAR RATZLAF and LORETTA RATZLAF whenever bank personnel had any questions or concerns regarding the fact that the RATZLAFS were purchasing cashier's checks with currency.

l. On October 27, 1988, after obtaining these cashier's checks, WALDEMAR RATZLAF, LORETTA RATZLAF, and RON HUNT returned to the High Sierra Casino where these cashier's checks were turned over to the High Sierra Casino as partial payment on WALDEMAR RATZLAF'S gambling debt.

OVERT ACTS

5. In furtherance of the conspiracy, and to effect the objectives thereof, the defendants committed the following overt acts, among others, in the State and Federal District of Nevada, and elsewhere:

a. On or about October 27, 1988, RON HUNT travelled in the High Sierra Casino limousine with WALDEMAR RATZLAF and LORETTA RATZLAF to various financial institutions in the Lake Tahoe area.

b. On or about October 27, 1988, at First Interstate Bank of Nevada, 110 Highway 50, Stateline, Nevada, LORETTA RATZLAF purchased and caused to be purchased with currency Cashier's Check No. 0025832 in the amount of $9,500 made payable to Resorts Reservations.

c. On or about October 27, 1988, at First Interstate Bank of Nevada, 110 Highway 50, Stateline, Nevada,

WALDEMAR RATZLAF purchased and caused to be purchased with currency Cashier's Check No. 0025833 in the amount of $9,500 made payable to Resorts Reservations.

d. On or about October 27, 1988, at Nevada Banking Company, 229 Kingsbury Grade, Stateline, Nevada, LORETTA RATZLAF purchased and caused to be purchased with currency Cashier's Check No. 19539 in the amount of $9,500 made payable to Resort Reservations.

e. On or about October 27, 1988, at Nevada Banking Company, 229 Kingsbury Grade, Stateline, Nevada, WALDEMAR RATZLAF purchased and caused to be purchased with currency Cashier's Check No. 19540 in the amount of $9,500 made payable to Resort Reservations.

f. On or about October 27, 1988, at Truckee River Bank, 3980 Highway 50, South Lake Tahoe, California, WALDEMAR RATZLAF informed a bank employee that he and the woman accompanying him each wished to purchase a cashier's check in the amount of $9,500 with currency. When asked by a bank employee if he and the woman were married, WALDEMAR RATZLAF responded that they (he and LORETTA RATZLAF) were not married.

g. On or about October 27, 1988, at the Truckee River Bank, 3980 Highway 50, South Lake Tahoe, California, RON HUNT informed bank employees that they (the RATZLAFS) would only purchase one cashier's check.

h. On or about October 27, 1988, at Truckee River Bank, 3980 Highway 50, South Lake Tahoe, California, LORETTA RATZLAF purchased and caused to be purchased with currency Cashier's Check No. 61-019974827

in the amount of $9,500 made payable to Resort Reservations.

i. On or about October 27, 1988, at Bank of America, 3344 Lake Tahoe Blvd., South Lake Tahoe, California, WALDEMAR RATZLAF purchased and caused to be purchased with currency Cashier's Check No. 0006225484 in the amount of $9,500 made payable to Resort Reservations.

j. On or about October 27, 1988, at Bank of America, 3344 Lake Tahoe Blvd., South Lake Tahoe, California, LORETTA RATZLAF purchased and caused to be purchased with currency Cashier's Check No. 0006226038 in the amount of $9,500 made payable to Resorts Reservations.

k. On or about October 27, 1988, at Security Pacific Bank, 2850 Highway 50, South Lake Tahoe, California, WALDEMAR RATZLAF purchased and caused to be purchased with currency Cashier's Check No. 04885508 in the amount of $9,500 made payable to Resort Reservations.

l. On or about October 27, 1988, at Security Pacific Bank, 2850 Highway 50, South Lake Tahoe, California, LORETTA RATZLAF did attempt to purchase with currency Cashier's Check No. 04885509 in the amount of $9,500 made payable to Resort Reservations.

m. On or about October 27, 1988, at Security Pacific Bank, 2850 Highway 50, South Lake Tahoe, California, a bank employee, after being informed that WALDEMAR RATZLAF had just purchased a $9,500 cashier's check with currency made payable to Resort Reservations,

informed LORETTA RATZLAF that the bank could not sell her a cashier's check for $9,500 without filing a Currency Transaction Report. RON HUNT responded that no form needed to be filled out because the check was not over $10,000. A bank employee responded that these transactions were suspicious and that the bank would fill out a currency transaction report if they sold LORETTA RATZLAF a cashier's check. At that point, RON HUNT asked for the money back and left the bank with LORETTA RATZLAF.

n. On or about October 27, 1988, at Central Bank, 2161 Lake Tahoe Blvd., South Lake Tahoe, California, LORETTA RATZLAF did attempt to purchase with currency Cashier's Check No. 364536 in the amount of $9,500 made payable to Resort Reservations.

o. On or about October 27, 1988, at Central Bank, 2161 Lake Tahoe Blvd., South Lake Tahoe, California, WALDEMAR RATZLAF did attempt to purchase with currency Cashier's Check No. 364537 in the amount of $9,500 made payable to Ron Hunt.

p. On or about October 27, 1988, at Central Bank, 2161 Lake Tahoe Blvd., South Lake Tahoe, California, after a bank employee informed LORETTA RATZLAF that she intended to file a Currency Transaction Report on LORETTA RATZLAF'S purchase of this cashier's check, RON HUNT asked why a currency transaction report needed to be filled out. After the bank employee explained why a currency transaction report had to be filled out, RON HUNT told LORETTA RATZLAF not to purchase the cashier's check.

In violation of Title 18, United States Code, Section 371.

COUNT TWO

(Structuring of Financial Transactions to Avoid Currency Reporting Requirements)

On or about October 27, 1988, in the State and Federal District of Nevada,

WALDEMAR RATZLAF,
LORETTA RATZLAF,
and
RON HUNT,

defendants herein, did knowingly and willfully, for the purpose of evading the reporting requirements of Title 31, United States Code, Section 5313(a), and Title 31, Code of Federal Regulations, Section 103.22, structure, assist in the structuring, and attempt to structure and assist in the structuring of a currency transaction with First Interstate Bank of Nevada, 110 Highway 50, Stateline, Nevada, a domestic financial institution, by purchasing and causing the purchase with currency First Interstate Bank Cashier's Check No. 0025832 in the amount of $9,500 made payable to Resorts Reservations.

In violation of Title 31, United States Code, Sections 5324(3) and 5322(a) and Title 18, United States Code, Section 2.

COUNT THREE

(Structuring of Financial Transactions to Avoid Currency Reporting Requirements)

On or about October 27, 1988, in the State and Federal District of Nevada,

WALDEMAR RATZLAF,
LORETTA RATZLAF,
and
RON HUNT

defendants herein, did knowingly and willfully, for the purpose of evading the reporting requirements of Title 31, United States Code, Section 5313(a), and Title 31, Code of Federal Regulations, Section 103.22, structure, assist in the structuring, and attempt to structure and assist in the structuring of a currency transaction with First Interstate Bank of Nevada, 110 Highway 50, Stateline, Nevada, a domestic financial institution, by purchasing and causing the purchase with currency First Interstate Bank Cashier's Check No. 0025833 in the amount of $9,500 made payable to Resorts Reservations.

In violation of Title 31, United States Code, Sections 5324(3) and 5322(a) and Title 18, United States Code, Section 2.

COUNT FOUR

(Structuring of Financial Transactions to Avoid Currency Reporting Requirements)

On or about October 27, 1988, in the State and Federal District of Nevada,

WALDEMAR RATZLAF,
LORETTA RATZLAF,
and
RON HUNT,

defendants herein, did knowingly and willfully, for the purpose of evading the reporting requirements of Title 31, United States Code, Section 5313(a), and Title 31, Code of Federal Regulations, Section 103.22, structure, assist in the structuring, and attempt to structure and assist in the structuring of a currency transaction with Nevada Banking Company, 229 Kingsbury Grade, Stateline Nevada, a domestic financial institution, by purchasing and causing the purchase with currency of Nevada Banking Company Cashier's Check No. 19539 in the amount of $9,500 made payable to Resort Reservations.

In violation of Title 31, United States Code, Sections 5324(3) and 5322(a) and Title 18, United States Code, Section 2.

COUNT FIVE

(Structuring of Financial Transactions to Avoid Currency Reporting Requirements)

On or about October 27, 1988, in the State and Federal District of Nevada,

WALDEMAR RATZLAF,
LORETTA RATZLAF,
and
RON HUNT,

defendants herein, did knowingly and willfully, for the purpose of evading the reporting requirements of Title 31, United States Code, Section 5313(a), and Title 31, Code of Federal Regulations, Section 103.22, structure, assist in the structuring, and attempt to structure and assist in the structuring of a currency transaction with Nevada Banking Company, 229 Kingsbury Grade, Stateline, Nevada, a domestic financial institution, by purchasing and causing the purchase with currency Nevada Banking Company Cashier's Check No. 19540 in the amount of $9,500 made payable to Resort Reservations.

In violation of Title 31, United States Code, Sections 5324(3) and 5322(a) and Title 18, United States Code, Section 2.

COUNT SIX

(Interstate Travel in Aid of Racketeering)

On or about October 27, 1988, in the State and Federal District of Nevada and elsewhere,

WALDEMAR RATZLAF,
LORETTA RATZLAF,
and
RON HUNT,

defendants herein, did travel in interstate commerce from Stateline in the State of Nevada to South Lake Tahoe in the State of California, with the intent to promote, manage, establish, and carry on, and to facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being the structuring of financial transactions to avoid the currency reporting requirements in violation of Title 31, United States Code, Sections 5324(3) and 5322(a), and thereafter did perform and attempt to perform acts to promote, manage, establish and carry on, and to facilitate the promotion, management, establishment, and carrying on of said unlawful activity.

In violation of Title 18, United States Code, Section 1952(a)(3) and Title 18, United States Code, Section 2.

Dated: Nov. 20, '90

A TRUE BILL:

/s/ Arthur Long
FOREPERSON

LELAND E. LUTFY
United States Attorney

/s/ J. B. Setness
JEFFREY B. SETNESS
Assistant United States Attorney

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, v. WALDEMAR RATZLAF, LORETTA RATZLAF, and RON HUNT, Defendants.	)	Case No. 6N 90 58 ECR DEFENDANTS' REQUESTED JURY INSTRUCTIONS (Filed Apr. 17, 1991)

Defendants, through their attorneys, request that the following jury instructions, or instructions substantially similar, be given in the trial of this matter.

DATED this 17 day of April, 1991.

Respectfully submitted,

O'CONNELL, GOYAK & DILORENZO

/s/ Kevin O'Connell
Kevin O'Connell, Esq.
of Attorneys for Waldemar Ratzlaf

/s/ Donald C. Hill
Donald C. Hill, Esq.
of Attorneys for Loretta Ratzlaf

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 11

Structuring, even with intent to evade the currency transaction reporting requirements, is not a crime unless it is willful. An act is willful if it is voluntary and purposeful and committed with the specific intent to do or fail to do what one knows is unlawful. In other words, the government may not convict the Defendants of structuring unless it proves beyond a reasonable doubt that they knew that structuring is illegal.

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 12

In general, ignorance of the law is not an excuse. Recently, however, the proliferation of statutes and regulations have sometimes made it difficult for the average citizen to know and comprehend the extent of the duties and obligations imposed by the law. Congress has accordingly softened the impact of the common law presumption by making specific intent to violate the law an element of certain federal criminal offenses. Thus, the term "willfully" has been held to carve an exception to the traditional rule. If a statute provides that a person is liable only if the [sic] "willfully" violates the law, ignorance of the law is an excuse.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 13

In sum, in order for the Defendants to be found guilty of the charge of structuring, the government must prove each of the following elements beyond a reasonable doubt:

First, that the Defendants structured, or assisted in structuring, or attempted to structure or assisted in structuring, any transaction with one or more financial institutions;

Second, that the Defendants acted for the purpose of evading the reporting requirements of Section 5313(a) Title 31 of the United States Code; and

Third, that the Defendants acted willfully.

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 14

The Defendants do not need to prove that they were ignorant of the law, or that the [sic] misunderstood their legal duties. Instead, the government must prove, beyond a reasonable doubt, that Defendants were not ignorant of the law and that they understood their legal duties. The extent of the Defendants' knowledge and understanding are questions for you, the jury.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,
PLAINTIFF,
VS.
WALDEMAR RATZLAF, LORETTA RATZLAF and RON HUNT,
DEFENDANTS.
_____/

CASE NO. CR-N-90-58-ECR
RENO, NEVADA
APRIL 22, 23, 24, 1991

VOLUME X
TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD C. REED, JR.
U.S. DISTRICT JUDGE

• • •

[p. 1786, l. 11] NOW WE'RE UP TO 63, 64 AND 65 AND 66, THE GOVERNMENT PROPOSES 63, DEFENSE HAVE OFFERED 64, 65 AND 66 AND THIS APPEARS TO FALL INTO THE HOYLAND PROBLEM.

66 LOOKS LIKE A SPECIFIC INTENT INSTRUCTION AS IS 65.

64 SPECIFICALLY ADDRESSES THE HOYLAND PROBLEM.

I'LL HEAR FROM THE GOVERNMENT. NOBODY NEED REPEAT THE HOYLAND ARGUMENTS, WE WILL INCORPORATE WHAT WE'VE DONE BEFORE AND WHAT WE HAVE DONE SO FAR TODAY.

MR. SETNESS: ALSO, YOUR HONOR, BECAUSE THERE IS NOT A DIRTH OF AUTHORITY OUT THERE WE LOOKED TO THE SECOND CIRCUIT SCANIO AND I THINK SCANIO GIVES US THE REST OF THIS INSTRUCTION.

MR. O'CONNELL: WHAT ARE WE ON?

THE COURT: 63, 64, 65 AND 66.

ANYTHING FURTHER?

[p. 1787] MR. SETNESS: NO.

THE COURT: DEFENSE.

MR. HILL: ON LINE 17, 18 IT IS WELL SETTLED THAT IGNORANCE OF THE LAW IS NO DEFENSE TO PURPOSEFUL AND INTENTIONAL ACTION. IGNORANCE OF THE FACT THAT THE BANKS HAD THE REPORTING REQUIREMENT ON NUMBER 63 IS IN FACT A DEFENSE.

THE COURT: SO YOU WOULD –

MR. HILL: MISSTATES THE LAW.

THE COURT: IF WE DID GIVE 63 YOU WOULD TAKE OUT THE FIRST SENTENCE IN THE LAST PARAGRAPH?

MR. HILL: YES.

THE COURT: RESERVING YOUR OTHER OBJECTIONS.

ANYBODY ELSE ON THE DEFENSE?

MR. O'CONNELL: YES, YOUR HONOR, I FELT THAT AFTER THE FIRST PARAGRAPH EXHIBIT, RATHER INSTRUCTION 76 SHOULD BE INSERTED.

THE COURT: 76?

MR. O'CONNELL: YES.

THE COURT: YOU WOULD RATHER HAVE IT THERE THAN BY ITSELF?

MR. O'CONNELL: I DON'T WANT IT SO FAR AWAY FROM 63. IF THIS FOLLOWS 63 THAT WOULD BE OKAY.

THE COURT: SO AS FAR AS YOU'RE CONCERNED AS FAR AS THAT PARTICULAR OBJECTION YOU WANT – IF 63 IS GIVEN YOU WANT 76 RIGHT AFTER 63?

[p. 1788] MR. O'CONNELL: YES, SIR.

THE COURT: ANYTHING ELSE ON THE DEFENSE?

MR. O'CONNELL: YES, SIR. IF THE SECOND PARAGRAPH IS GOING TO STAY IN THAT THE GOVERNMENT DOES NOT HAVE TO PROVE THAT THE DEFENDANTS KNEW STRUCTURING WAS UNLAWFUL. I THINK SOMETHING TO THE EFFECT THAT IF YOU ARE SATISFIED THAT THE DEFENDANTS DID NOT KNOW OF THE BANK'S FILING REQUIREMENTS THAT COULD BE A DEFENSE.

THE COURT: WHAT CHANGE WOULD YOU MAKE IN 63 TO MEET THAT OBJECTION?

MR. O'CONNELL: EITHER I WOULD DELETE THE SECOND PARAGRAPH OR I WOULD ADD ANOTHER SENTENCE, "HOWEVER, THE DEFENDANTS' LACK OF KNOWLEDGE OF THE BANK'S REPORTING REQUIREMENTS –

THE COURT: WAIT A SECOND NOW.

MR. O'CONNELL: THE BANK'S REPORTING REQUIREMENTS COULD BE A DEFENSE.

THE COURT: ANYTHING ELSE ON THE DEFENSE SIDE?

ANYTHING ELSE BY THE GOVERNMENT?

MR. SETNESS: YES, YOUR HONOR. WE WOULD HAVE NO OBJECTION TO PUTTING 76 BEHIND 63. THE DEFENDANTS OFFER, HOWEVER THE DEFENDANTS' LACK OF KNOWLEDGE, THAT'S ALMOST LIKE A DIRECTED VERDICT. WE DON'T BELIEVE THERE WAS A LACK OF KNOWLEDGE AND THIS SEEMS REALLY FORCEFUL, HOWEVER THE DEFENDANTS' LACK OF KNOWLEDGE OF THE BANK'S REPORTING [p. 1789] REQUIREMENTS COULD BE A DEFENSE. THAT'S TOO STRONG LEANING TOWARD SOMEHOW THEY DO LACK THIS KNOWLEDGE WHICH THE GOVERNMENT BELIEVES THEY DID HAVE.

THE COURT: HOW WOULD YOU REWORD WHAT MR. O'CONNELL DID TO OVERCOME THAT OBJECTION?

MR. SETNESS: SOMEHOW IF WE CAN LOOK AT 61, YOUR HONOR, THE FIRST ELEMENT, SOMEHOW FASHION SOMETHING OUT OF THAT. BUT THAT GOES –

THE COURT: SUPPOSE YOU SAID HOWEVER IF THE DEFENDANT – HOWEVER IF A DEFENDANT LACKED KNOWLEDGE.

MR. SETNESS: HOWEVER IF THE DEFENDANT DID NOT HAVE KNOWLEDGE OF THE FINANCIAL INSTITUTION –

THE COURT: WAIT A SECOND NOW. HOWEVER.

MR. SETNESS: IF A DEFENDANT DID NOT HAVE KNOWLEDGE OF A FINANCIAL INSTITUTION'S DUTY –

THE COURT: STOP. YOU DON'T LIKE BANK?

MR. SETNESS: THAT'S FINE, YOUR HONOR.

THE COURT: HOWEVER, IF A DEFENDANT DID NOT HAVE KNOWLEDGE –

MR. SETNESS: OF A BANK'S.

THE COURT: OF A BANK'S REPORTING REQUIREMENTS.

MR. SETNESS: OR BANK'S DUTY TO REPORT CURRENCY TRANSACTIONS –

THE COURT: HOLD IT.

ALL RIGHT.

[p. 1790] MR. SETNESS: HOWEVER IF THE DEFENDANT DID NOT HAVE KNOWLEDGE OF A BANK'S DUTY TO REPORT CURRENCY TRANSACTIONS IN EXCESS OF TEN THOUSAND DOLLARS THAT MAY BE CONSIDERED A DEFENSE.

THE COURT: WHAT ABOUT ABOUT THAT, MR. O'CONNELL?

MR. O'CONNELL: HOW ABOUT IF A DEFENDANT DID NOT HAVE KNOWLEDGE OR UNDERSTANDING OF THE BANK'S DUTY TO REPORT CURRENCY TRANSACTIONS IN EXCESS OF TEN THOUSAND DOLLARS.

THE COURT: I'M READY TO MAKE THE RULING. I DON'T THINK WE SHOULD PUT IN UNDERSTANDING. WE'RE LOOKING AT THE ESSENTIAL ELEMENTS AND IT SAYS KNOWLEDGE RATHER THAN UNDERSTANDING. WE WILL GIVE 63 WITH THE CHANGES I WILL STATE IN A MOMENT. WE WILL REJECT 64, 65, 66.

LET ME HEAR FROM THE GOVERNMENT ON 76.

MR. SETNESS: I BELIEVE THAT WE HAVE ADEQUATELY COVERED IN 63, YOUR HONOR, WHAT KNOWINGLY AND WILLFUL IS AND THIS, IT'S MY UNDERSTANDING THIS IS JUST DICTA AND THIS APPEARS TO ADD SORT OF AN EXTRA DIMENSION, SORT OF DELIBERATE INTENTION WHICH I THINK WOULD BE CONFUSING WITH SIXTY THREE WHICH THE COURT IS GIVING AND IT APPEARS THE COURT HAS BENT OVER BACKWARDS TO MAKE SURE THAT WE GET IN THIS LANGUAGE ABOUT LACK OF

KNOWLEDGE ABOUT THE BANK'S REPORTING REQUIREMENT, I THINK WE'RE COVERED.

THE COURT: ALL RIGHT, DEFENSE ON 76.

MR. O'CONNELL: IT COMES FROM HOYLAND, YOUR HONOR. [p. 1791] WE'RE KIND OF BOXED IN IF CHEEK IS NOT ACCEPTED, AT LEAST WE CAN GET SOME OF THE LIMITING LANGUAGE OUT OF HOYLAND.

AND THIS CONCEPT, SPECIFICALLY I ASKED QUESTIONS USING THIS TERM TO TRY TO FASHION MY EXAMINATION OR CROSS EXAMINATION INTO THE RESTRICTIONS THE COURT FASHIONED DURING THE – WHEN THE ISSUE FIRST CAME UP OF SPECIFIC INTENT.

THE COURT: I'M READY TO MAKE THE RULING ON THIS. WE WILL GIVE 76 AND WE WILL REPOSITION IT SO IT WILL COME RIGHT AFTER 63. IT APPEARS IT DOES COME OUT OF HOYLAND. IT APPEARS IT IS INSTRUCTIVE AS TO THE LAW.

63 WILL HAVE THE FOLLOWING CHANGES IN IT. WE WILL INSERT IN LINE 13.5 AFTER 5322(a) THE FOLLOWING, HOWEVER, IF A DEFENDANT DID NOT HAVE KNOWLEDGE OF A BANK'S DUTY TO REPORT CURRENCY TRANSACTIONS IN EXCESS OF TEN THOUSAND DOLLARS THAT MAY BE CONSIDERED A DEFENSE.

WE WILL ALSO TAKE OUT THE IGNORANCE OF THE LAW INSTRUCTION LINE 17 AND 18, THAT ONE SENTENCE STARTING WITH IT IS WELL SETTLED.

I'LL ASK YOU, MR. MORRISSEY, ARE YOU STRAIGHT ON THIS?

THE BAILIFF: YES, I AM.

MR. SETNESS: YOUR HONOR, DOES 76 FOLLOW 63?

THE COURT: YES.

MR. SETNESS: THANK YOU, YOUR HONOR. [l. 23]

* * *

[p. 2017, l. 4] I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

/s/ Ron Caughron-Flannigan — 9/20/91
RON CAUGHRON-FLANNIGAN, CM, CSR — DATE
OFFICIAL COURT REPORTER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,
PLAINTIFF,
VS.
WALDEMAR RATZLAF, and
LORETTA RATZLAF,
DEFENDANTS.
_____/

CASE NO.
CR-N-90-58-ECR
RENO, NEVADA
APRIL 23, 1991

VOLUME XII
TRANSCRIPT RE READING OF INSTRUCTIONS
BEFORE THE HONORABLE EDWARD C. REED, JR.
U.S. DISTRICT JUDGE

* * *

[p. 2126, l. 6] THE ESSENTIAL ELEMENTS REQUIRED TO BE PROVEN BEYOND A REASONABLE DOUBT IN ORDER TO ESTABLISH THE OFFENSES CHARGED IN COUNTS TWO THROUGH FIVE OF THE INDICTMENT, WHICH ARE VIOLATIONS OF TITLE 31, UNITED STATES CODE, SECTION 5324(3) AND 5322(a) AS DEFINED IN TITLE 31, CODE OF FEDERAL REGULATIONS, SECTIONS 103.21 AND 103.22(a)(1), ARE AS FOLLOWS:

FIRST, THE DEFENDANTS HAD KNOWLEDGE OF A FINANCIAL INSTITUTION'S DUTY TO REPORT CURRENCY TRANSACTIONS IN EXCESS OF TEN THOUSAND DOLLARS.

SECOND, WITH SUCH KNOWLEDGE, THE DEFENDANTS KNOWINGLY AND WILLFULLY STRUCTURED

OR ASSISTED IN STRUCTURING OR ATTEMPTED TO STRUCTURE OR ASSIST IN STRUCTURING A CURRENCY TRANSACTION.

THIRD, THE PURPOSE OF THE STRUCTURED OR ATTEMPTED TRANSACTION WAS TO EVADE THE TRANSACTION REPORTING REQUIREMENTS

AND, FOURTH, THE STRUCTURED TRANSACTIONS INVOLVED ONE OR MORE DOMESTIC FINANCIAL INSTITUTIONS.

AN ACT IS KNOWINGLY – LET ME START OVER. AN ACT IS DONE KNOWINGLY AND WILLFULLY FOR THE PURPOSES OF TITLE 31, UNITED STATES CODE, SECTION 5324(3) AND 5322(a), IF THE [p. 2127] DEFENDANTS, WITH KNOWLEDGE OF A FINANCIAL INSTITUTION'S DUTY TO REPORT CURRENCY TRANSACTIONS IN EXCESS OF TEN THOUSAND DOLLARS, VOLUNTARILY OR INTENTIONALLY STRUCTURED OR ASSISTED IN THE STRUCTURING OR ATTEMPTED TO STRUCTURE OR ASSIST IN THE STRUCTURING A CURRENCY TRANSACTION WITH THE PURPOSE OF EVADING THE CURRENCY REPORTING REQUIREMENT.

THE GOVERNMENT DOES NOT HAVE TO PROVE THAT THE DEFENDANTS KNEW THE STRUCTURING WAS UNLAWFUL NOR DOES THE GOVERNMENT HAVE TO PROVE THAT THE DEFENDANTS KNEW OF THE EXISTENCE OF THE LAW WHICH THEY ARE CHARGED WITH BREAKING, TITLE 31, UNITED STATES CODE, SECTIONS 5324(3) AND 5322(a). HOWEVER, IF A DEFENDANT DID NOT HAVE KNOWLEDGE OF A BANK'S DUTY TO REPORT CURRENCY

TRANSACTIONS IN EXCESS OF TEN THOUSAND DOLLARS, THAT MAY BE CONSIDERED A DEFENSE.

IT IS NOT A DEFENSE THAT THE DEFENDANTS DID NOT KNOW THAT STRUCTURING ITSELF IS A VIOLATION OF LAW OR OF THE EXISTENCE OF TITLE 31, UNITED STATES CODE, SECTIONS 5324(3) AND 5322(a).

IF YOU FIND THAT STRUCTURING OCCURRED, AND WAS KNOWINGLY AND WILLFULLY ENGAGED IN BY DEFENDANTS FOR THE SPECIFIC PURPOSE OF EVADING A REPORTING REQUIREMENT THAT WAS KNOWN BY THE DEFENDANTS TO EXIST, THAT IS SUFFICIENT.

ONLY A PERSON WHO HAS DELIBERATE INTENTION TO FRUSTRATE THE REPORTING BY THE BANKS CAN BE GUILTY OF THE OFFENSE OF STRUCTURING. [l. 25]

• • •

[p. 2139, l. 13] I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

/s/ Ron Caughron-Flannigan 11/6/91
RON CAUGHRON-FLANNIGAN, CM, CSR DATE
OFFICIAL COURT REPORTER

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WALDEMAR RATZLAF, LORETTA RATZLAF, and

Defendants.

_____/

CR-N-90-58-ECR

JOINT NOTICE OF APPEAL

(Filed Jul. 10, 1991)

NOTICE IS HEREBY GIVEN that Waldemar Ratzlaf and Loretta Ratzlaf, Defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 8th day of July, 1991.

/s/ Donald Cavin Hill
DONALD CAVIN HILL, ESQ.
485 West Fifth Street
Reno, Nevada 89503
(702) 323-7758
Attorney for Loretta Ratzlaf

/s/ Kevin O'Connell
KEVIN O'CONNELL, ESQ.
800 One Financial Center
121 S.W. Morrison Street
Portland, Oregon 97204-3138
(503) 227-2902
Attorney for Waldemar Ratzlaf

UNITED STATES DISTRICT COURT
_____ District of NEVADA

UNITED STATES OF AMERICA

V.

WALDEMAR RATZLAF

(Name of Defendant)

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

(Filed July 12, 1991)

Case Number: CR-N-90-58-ECR

KEVIN O'CONNELL
Defendant's Attorney

THE DEFENDANT:

[ ] pleaded guilty to count(s) _____

[X] was found guilty on count(s) 1, 2, 3, 4, 5 & 6 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18:371	Conspiracy	October, 1988	1
31:5324(3) & 5322	Structuring of Financial Transactions to Avoid Currency Reporting Requirements	October, 1988	2,3,4,5
18:1952(a)(3)	Interstate Travel in Aid of Racketeering	October, 1988	6
18:2	Aiding & Abetting	October, 1988	2,3,4,5,6

The defendant is sentenced as provided in pages 2 through 6* of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

[ ] The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).

[ ] Count(s) _____ (is) (are) dismissed on the motion of the United States.

[X] It is ordered that the defendant shall pay a special assessment of $ 300.00 for count(s) 2, 3, 4, 5, 6, which shall be due [X] immediately [ ] as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

* Each separate page is signed and dated by the presiding judicial officer.

Defendant's Soc. Sec. No.: 542-36-1181

Defendant's Date of Birth: 12/24/36

Defendant's Mailing Address:

7515 S. E. 116th

Portland, OR 97266

Defendant's Residence Address:

Same

July 8, 1991
Date of Imposition of Sentence

/s/ Edward C. Reed
Signature of Judicial Officer

EDWARD C. REED, JR., CHIEF USDJ
Name & Title of Judicial Officer

July 11, 1991
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of FIFTEEN (15) MONTHS AS TO EACH OF COUNTS 1, 2, 3, 4,5 & 6. SENTENCES ARE TO RUN CONCURRENTLY TO EACH OTHER.

Defendant shall receive credit for all time served in federal custody in connection with these charges.

Counsel has informed the Court that he will file a notice of appeal. If said Notice of Appeal is filed, the sentence is stayed pending completion of the appeal.

[XX] The court makes the following recommendations to the Bureau of Prisons: That defendant be placed at the Sheridan, Oregon facility so as to be near his family and his son who is ill.

[ ] The defendant is remanded to the custody of the United States marshal.

[ ] The defendant shall surrender to the United States marshal for this district.

[ ] at ___ a.m. p.m. on _____.

[ ] as notified by the United States marshal.

[ ] The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.

[ ] before 2 p.m. on _____

[ ] as notified by the United States marshal.

[ ] as notified by the probation office.

Dated this 11th day of July, 1991.

/s/ Edward C. Reed
Chief, U. S. District Judge

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
United States Marshal

By _____

_____

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of THREE (3) YEARS.

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the

term of supervised release. The defendant shall comply with the following additional conditions:

[ ] The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

[ ] The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

[XX] The defendant shall not possess a firearm or destructive device.

See Page 4 for Additional Conditions of Supervised Release.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the

probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Dated this 11th day of July, 1991.

/s/ Edward C. Reed
Chief, U. S. District Judge

RESTITUTION, FORFEITURE, OR OTHER PROVISIONS OF THE JUDGMENT

Additional Conditions of Supervised Release:

Defendant shall pay a fine in the amount of $5,000.00.

Defendant shall pay an additional fine pursuant to Section 5E1.2(i) of the Sentencing Guidelines which will be sufficient to pay the Government for costs of incarceration and supervised release. Defendant shall pay the sum of $18,000.00 to pay for the costs of his incarceration, together with the sum of $3,300.00 to pay for the costs of his supervision.

The total fine and additional fine will be $26,300.00.

All of said fines are payable within 120 days. If a Notice of Appeal is filed, the requirement to pay the fines will be stayed.

Defendant shall not incur any new credit charges or any additional lines of credit without authorization from his supervising probation officer, and shall provide his supervising probation officer with any requested financial information.

Dated this 11th day of July, 1991.

/s/ Edward C. Reed
Chief, U. S. District Judge

FINE

The defendant shall pay a fine of $ 26,300.00. The fine includes any costs of incarceration and/or supervision.

[X] This amount is the total of the fines imposed on individual counts, as follows:

1, 2, 3, 4, 5 & 6.

[ ] The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

[ ] The interest requirement is waived.

[ ] The interest requirement is modified as follows:

This fine plus any interest required shall be paid: Within 120 days. If a Notice of Appeal is filed this requirement is stayed.

[ ] in full immediately.

[ ] in full not later than _____.

[ ] in equal monthly installments over a period of ___ months. The first payment is due on the date of this judgment. Subsequent payments are due monthly thereafter.

[ ] in installments according to the following schedule of payments:

Dated this 11th day of July, 1991.

/s/ Edward C. Reed
Chief, U. S. District Judge

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

STATEMENT OF REASONS

[XX] The court adopts the factual findings and guideline application in the presentence report.

OR

[ ] The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 13

Criminal History Category: I

Imprisonment Range: 12 to 18 months

Supervised Release Range: 2 to 3 years

Fine Range: $ 3,000 to $ 30,000

[ ] Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution: $ _____

[ ] Full restitution is not ordered for the following reason(s):

[X] The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.
See Transcript of the Statement of Reasons

OR

[ ] The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

The sentence departs from the guideline range

[ ] upon motion of the government, as a result of defendant's substantial assistance.

[ ] for the following reason(s):

Dated this 11th day of July, 1991.

/s/ Edward C. Reed
Chief, U. S. District Judge

UNITED STATES DISTRICT COURT
_____ District of NEVADA

UNITED STATES OF AMERICA

V.

LORETTA RATZLAF,

(Name of Defendant)

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

(Filed July 12, 1991)

Case Number: CR-N-90-58-ECR

DONALD CAVIN HILL
Defendant's Attorney

THE DEFENDANT:

[ ] pleaded guilty to count(s) _____

[X] was found guilty on count(s) ONE (1) and SIX (6) after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18:371	Conspiracy	October, 1988	1
18:1952(a)(3)	Interstate Travel in Aid of Racketeering,	October, 1988	6
18:2	Aiding & Abetting	October, 1988	6

The defendant is sentenced as provided in pages 2 through 4* of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

[X] The defendant has been found not guilty on count(s) 2, 3, 4 & 5 and is discharged as to such count(s).

[ ] Count(s) _____ (is) (are) dismissed on the motion of the United States.

[X] It is ordered that the defendant shall pay a special assessment of $ 100.00, for count(s) 1 & 6, which shall be due [XX] immediately [ ] as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

* Each separate page is signed and dated by the presiding judicial officer.

Defendant's Soc. Sec. No.:
541-50-1527

Defendant's Date of Birth:
6/4/44

Defendant's Mailing Address:

7515 S. E. 116th

Portland, OR 97266

Defendant's Residence Address:

Same

July 8, 1991
Date of Imposition of Sentence

/s/ Edward C. Reed
Signature of Judicial Officer

EDWARD C. REED, JR., CHIEF USDJ
Name & Title or Judicial Officer

July 12, 1991
Date

PROBATION

The defendant is hereby placed on probation for a term of FIVE (5) YEARS EACH AS TO COUNTS ONE (1) AND SIX (6), sentences shall run concurrently with each other.

While on probation, the defendant shall not commit another Federal, state, or local crime, shall not illegally possess a controlled substance, and shall not possess a firearm or destructive device. The defendant also shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution. The defendant shall comply with the following additional conditions:

Defendant shall serve a period of TEN (10) MONTHS in home detention and shall be restricted to her place of residence during all non-working hours. Defendant shall be permitted to take her son to the doctor and the hospital.

Defendant shall pay a fine in the amount of $1,000.00.

Defendant shall pay an additional fine pursuant to Section 5E1.2(i) of the Sentencing Guidelines which will be sufficient to pay the Government for costs of supervision and home detention. Defendant shall pay the sum of $5,500.00 to pay for the costs of supervision, together with the sum of $1,400.00 to pay for the costs of her home detention.

The total fine and additional fines will be $7,900.00.

All of said fines are payable within 120 days. If a Notice of Appeal is filed, the requirement to pay the fines will be stayed.

Defendant shall not incur any new credit charges or any additional lines of credit without authorization from her supervising probation officer, and shall provide his supervising probation officer with any requested financial information.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Dated this 12 day of July, 1991.

/s/ Edward C. Reed
Edward C. Reed
Chief, U. S. District Judge

FINE

The defendant shall pay a fine of $ 7,900.00. The fine includes any costs of ~~incarceration and/or~~ supervision and home detention.

[XX] This amount is the total of the fines imposed on individual counts, as follows:

1 and 6

[ ] The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

[ ] The interest requirement is waived.

[ ] The interest requirement is modified as follows:

This fine plus any interest required shall be paid: Within 120 days. If a Notice of Appeal is filed this requirement is stayed.

[ ] in full immediately.

[ ] in full not later than _____.

[ ] in equal monthly installments over a period of ___ months. The first payment is due on the date of this judgment. Subsequent payments are due monthly thereafter.

[ ] in installments according to the following schedule of payments:

Dated this 12 day of July, 1991.

/s/ Edward C. Reed
Edward C. Reed
Chief, U. S. District Judge

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

STATEMENT OF REASONS

[XX] The court adopts the factual findings and guideline application in the presentence report.

OR

[ ] The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 11

Criminal History Category: I

Imprisonment Range: 8 to 14 months

Supervised Release Range: 2 to 3 years

Fine Range: $ 2,000 to $ 20,000

[ ] Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution: $ _____

[ ] Full restitution is not ordered for the following reason(s):

[ ] The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

[ ] The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

The sentence departs from the guideline range

[ ] upon motion of the government, as a result of defendant's substantial assistance.

[X] for the following reason(s): Due to defendant's 14-year old son's illness with lymphoblastic leukemia, which needs treatment every nine (9) days and who needs the support of the defendant for the next two (2) years.

Dated this 12 day of July, 1991.

/s/ Edward C. Reed
Edward C. Reed
Chief, U. S. District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES
OF AMERICA,

Plaintiff,

vs.

LORETTA RATZLAF

Defendants.

_____/

CR-N-90-58-ECR

NOTICE OF APPEAL
(Filed Aug. 14, 1991)

NOTICE IS HEREBY GIVEN that Loretta Ratzlaf, Defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 8th day of July, 1991.

A Joint Notice Of Appeal was originally filed in this matter on July 10, 1991 on behalf of Loretta Ratzlaf and Waldemar Ratzlaf by their respective attorneys, Kevin O'Connell and Donald Cavin Hill.

Mr. Donald Cavin Hill was notified by the Ninth Circuit Court Of Appeals on August 13, 1991 that there would be a necessity to file a second appeal notice and $105.00 fee on behalf of Mrs. Ratzlaf and they would use the $105.00 fee and the prior filing on behalf of Mr. Ratzlaf.

DATED this 14th day of August, 1991.

/s/ Donald Cavin Hill
DONALD CAVIN HILL, ESQ.
485 West Fifth Street
Reno, Nevada 89503
(702) 323-7758
Attorney for Loretta Ratzlaf

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. WALDEMAR RATZLAF, *Defendant-Appellant.*	No. 91-10397 D.C. No. CR-N-90-58-ECR OPINION
UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. LORETTA RATZLAF, *Defendant-Appellant.*	No. 91-10429 D.C. No. CR-N-90-58-ECR

Appeal from the United States District Court
for the District of Nevada
Edward C. Reed, Jr., Chief Judge, Presiding

Argued and Submitted
July 14, 1992 – San Francisco, California

Filed October 6, 1992

Before: J. Clifford Wallace, Chief Judge, and
Herbert Y. C. Choy and Cecil F. Poole, Circuit Judges.

Opinion by Judge Poole

SUMMARY

Criminal Law and Procedure/Criminal Acts/Defenses

Affirming district court judgments of conviction for structuring financial transactions to avoid currency reporting requirements, the court of appeals held that the recent Supreme Court decision in *Cheek v. United States* did not overrule the Ninth Circuit's holding in *United States v. Hoyland* that the government had to prove that a defendant knew such structuring was illegal to convict.

Appellants Waldemar and Loretta Ratzlaf were high-time gamblers. To facilitate their enjoyment of such activity, they established lines of credit at numerous casinos in New Jersey and Nevada. Mr. Ratzlaf, a regular customer and a "high roller" at the casinos, bet, won, and lost large amounts of money. A bad night at a Nevada casino made Mr. Ratzlaf lose $160,000. The Ratzlafs tendered payment to the casino in cash because Mr. Ratzlaf did not want the casino to fill out any written report of the payment transaction. However, the casino refused to accept cash payment on those terms and informed the Ratzlafs that the casino would be required to fill out a "currency transaction report" since more than $10,000 in currency was involved. Subsequently, the Ratzlafs obtained various cashiers checks in amounts of less than $10,000 to repay the casino debt. A federal grand jury indicted the Ratzlafs for structuring financial transactions to avoid currency reporting requirements. A jury convicted the Ratzlafs. The Ratzlafs argued that the jury instructions misstated the elements of the crime of structuring financial transactions to avoid the currency reporting requirements.

[1] The court noted that it recently rejected in *Hoyland* the argument that an individual cannot be convicted of "structuring" unless the government proves that he or she knew such activities were illegal. In so holding, the court agreed with the Second Circuit's holding to that effect in *Scanio*. **[2]** The court rejected the Ratzlafs' argument that the Supreme Court's recent decision in *Cheek v. United States* overruled *Hoyland* and *Scanio*. **[3]** The court noted that other circuits have rejected the notion that *Cheek* changes the *Hoyland* and *Scanio* conclusions. **[4]** However, the court disagreed with the New Hampshire district court holding in *Aversa* that the defendant there could not be convicted of structuring because he did not know that it was illegal. First, the currency structuring and reporting statutes are not "complex" in the sense that the *Cheek* court used that term in referring to the federal tax laws. **[5]** Second, the court did not think the rule of lenity applies to the money laundering statutes. Here, the language of the statute in question was not ambiguous, and even a strict reading of the statute supports, not undercuts, the government's proffered interpretation. **[6]** The court thus concluded that *Hoyland* and *Scanio* rest firmly upon Congress' intent in proscribing structuring. After the 1986 amendments to the statute, one could be prosecuted for violating section 5324(3) if he or she willfully structured transactions. **[7]** If a defendant knows that the bank must report a currency transaction and then intentionally acts in a way to prevent that, he has acted willfully.

COUNSEL

Kevin O'Connell, O'Connell, Goyak & DiLorenzo, Portland, Oregon, and Donald C. Hill, Reno, Nevada, for the defendants-appellants.

Jeffrey B. Setness and William M. Welch, Assistant United States Attorneys, Reno Nevada, for the plaintiff-appellee.

OPINION

POOLE, Circuit Judge:

Defendants Loretta and Waldemar Ratzlaf appeal their convictions for structuring financial transactions to avoid currency reporting requirements, a violation of 31 U.S.C. §§ 5322(a), 5324(3). They argue that *Cheek v. United States*, 111 S.Ct. 604 (1991), overrules our holding in *United States v. Hoyland*, 914 F.2d 1125 (9th Cir. 1990), that the government does not have to prove that the defendants knew structuring is illegal to convict. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

I

Defendants Waldemar and Loretta Ratzlaf, residents of Portland, Oregon, are gamblers, To facilitate their enjoyment of such activity, they established lines of credit at fifteen casinos in New Jersey and Nevada. Mr. Ratzlaf, a regular customer and a "high roller" at the casinos, bet, won, and lost large amounts of money. The events that led to this case began on October 20th, 1988, at the High Sierra casino in Reno, Nevada. Mr. Ratzlaf had a bad night, losing $160,000 playing blackjack. Fortunately for

him, the casino had increased his credit line from $25,000 to $160,000 earlier that day. When the casino learned about Lady Luck's unkind treatment of Mr. Ratzlaf, it granted him one week to pay back the $160,000 balance.

On October 27, 1988, the Ratzlafs returned to the High Sierra casino carrying enough cash to pay their debt. Shift manager Tony Mercurio informed his boss, casino Vice-President Stephen Allmaras, that Mr. Ratzlaf did not want the casino to fill out any written report of the payment transaction. Allmaras refused to accept cash payment on those terms and informed the Ratzlafs that he would be required to fill out a "currency transaction report" (CTR) since more than $10,000 in currency was involved. Allmaras told Mr. Ratzlaf that he would be happy to accept as an alternative a single cashier check for the amount due and suggested to Mr. Ratzlaf that he contact his bank in Oregon to make the necessary arrangements. Allmaras also made available to the Ratzlafs a limousine and assigned employee Ron Hunt to transport them to the local bank that would provide the check.

On October 28, 1988, Hunt escorted the Ratzlafs to several banks in and near Stateline, Nevada and South Lake Tahoe, California. At each bank the Ratzlafs used cash to purchase, or attempt to purchase, cashiers checks in amounts less than $10,000. Armed with the cashiers checks thus obtained, the Ratzlafs returned to the High Sierra casino and submitted them as partial payment on their gambling debt. However, not all of the $160,000 debt was eliminated. Accordingly, on November 28, 1988, Mr. Ratzlaf gave Ruby Langston, a former employee at a restaurant owned by the Ratzlafs, $5,000 in currency and

asked her to purchase a single cashiers check for that amount. Langston purchased the cashiers check at First Interstate Bank in Portland. On the same day Mr. Ratzlaf also gave Lena Koseniensky $5,000 in currency and asked her to perform a similar errand. Koseniensky did so at the same bank Langston had visited. Two days later, Mr. Ratzlaf gave George Chanouzas $7,500 in cash and asked him to buy a single cashiers check. Chanouzas also performed this transaction at the First Interstate Bank in Portland. Between November 29 and December 5, 1988, the Ratzlafs separately and together used currency to purchase five cashiers checks, each in amounts less than $10,000, from two other Portland banks.

When asked by IRS investigators why they had paid for the cashiers checks with cash, the Ratzlafs asserted that the money was gambling proceeds and that the High Sierra casino asked them to "pay off the marker" with cashiers checks. Mrs. Ratzlaf also stated that the casino management instructed them to purchase cashiers checks in small amounts so that the casino would not be required to complete a CTR. Mr. Ratzlaf testified at trial that the couple kept gambling winnings and cash revenues from their restaurant hidden in a piece of furniture in their bedroom. Allmaras denied suggesting to the Ratzlafs that they visit various banks and purchase cashiers checks in amounts less than $10,000.

On November 20, 1990 a federal grand jury indicted the Ratzlafs and Hunt. The trio was charged with (1) conspiracy to structure and assist in structuring financial transactions for the purpose of evading reporting requirements; (2) four counts of structuring currency transactions to evade reporting requirements; and (3) interstate

travel in aid of racketeering. At trial, the district judge instructed the jury as follows on the structuring charges:

> The essential elements required to be proven beyond a reasonable doubt . . . are as follows:
>
> First: The defendants had knowledge of a financial institution's duty to report currency transactions in excess of $10,000;
>
> Second: With such knowledge, the defendants knowingly and willfully structured or assisted in structuring or attempted to structure or assist in structuring a currency transaction;
>
> Third: The purpose of the structured transaction was to evade the transaction reporting requirement;
>
> Fourth: The structured transaction(s) involved one or more domestic financial institutions.
>
> . . . .
>
> An act is done knowingly and willfully for the purpose of [31 U.S.C. §§ 5322(a), 52324(3)] if the defendants, with knowledge of a financial institution's duty to report currency transactions in excess or [sic] $10,000, voluntarily or intentionally structured or assisted in structuring or attempted to structure or assist in structuring a currency transaction with the purpose of evading the currency reporting requirements.
>
> The government does not have to prove that the defendants knew that structuring was unlawful[,] nor does the government have to prove that the defendants knew of the existence

> of the law which they are charged with breaking. . . . However, if a defendant did not have knowledge of a bank's duty to report currency transactions in excess or [sic] $10,000, that may be considered a defense.
>
> It is not a defense that the defendants did not know that "structuring" itself is [illegal] or of the existence of [31 U.S.C. §§ 5322(a), 5324(3)].

The jury convicted Mr. Ratzlaf on all counts and Mrs. Ratzlaf on the conspiracy and interstate travel charges.[1] Mr. Ratzlaf was sentenced to fifteen months in federal prison on each count, to run concurrently; three years supervised release; and to pay a fine of $26,300 and a special assessment of $300. Mrs. Ratzlaf was sentenced to five years probation on each count, to run concurrently and to include ten months home detention, and to pay a $7,900 fine and a $100 special assessment. The defendants filed timely notices of appeal on July 10 and August 14, 1991.

II

We review de novo the question whether the jury instructions in this case misstated the elements of the crime of structuring financial transactions to avoid the currency reporting requirements. *United States v. Durham*, 941 F.2d 886, 890 (9th Cir. 1991). "We review a claim of error in a jury instruction by looking to 'the adequacy of

---

[1] Hunt was convicted on the conspiracy count, two structuring counts, and the interstate travel charge. His convictions are not at issue in this appeal.

> the entire charge . . . in the context of the whole trial.' " *United States v. Mundi*, 892 F.2d 817, 818 (9th Cir. 1989), *cert. denied*, 111 S.Ct. 1072 (1991) (quoting *United States v. Marabelles*, 724 F.2d 1374, 1382 (9th Cir. 1984)).

III

31 U.S.C. § 5324 provides:

> No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction –
>
> . . .
>
> (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

Individuals that engage in such "structuring" activities are subject to criminal penalties. 31 U.S.C. § 5322(a) ("A person *willfully* violating this subchapter or a regulation prescribed [there]under . . . shall be fined . . . or imprison[ed] . . . or both.") (emphasis added).[2]

---

[2] The Bank Secrecy Act of 1970, 31 U.S.C. § 5313(a), and associated regulations promulgated under its authority, 31 C.F.R. § 103.22(a)(1), obligate financial institutions to report to the government currency transactions involving more than $10,000. Congress enacted this law because individuals involved in criminal activity frequently engage in sizeable cash transactions. The reports, called "Currency Transaction Reports" or "CTRs," help law enforcement officers investigate and fight a variety of criminal activity. *See generally* H.R. Rep. No. 975, 91st Cong., 2d Sess., *reprinted in* 1970 U.S.C.C.A.N. 4394, 4396; Rusch, *Hue and Cry in the Counting-House: Some*

[1] We recently rejected an argument that an individual cannot be convicted of "structuring" unless the government proves that he or she knew such activities were illegal:

> Congress had set the reporting requirement for the banks. Congress was aware that several circuits, including ours, had held it no crime to structure deposits so that the reporting requirement would not be triggered. Congress changed that law to make it a crime so to structure with the intent to prevent reporting. To act willfully under the statute is to act with this intent. . . .

United States v. Hoyland, 914 F.2d 1125, 1129-30 (9th Cir. 1990) (internal statutory citations omitted). In so holding, we agreed with *United States v. Scanio*, 900 F.2d 485 (2d Cir. 1990). There, the Second Circuit concluded that knowledge of illegality is not required to convict for "structuring" because such conduct is "affirmative" and "demonstrate[s] an awareness of the legal framework relative to currency transactions which, it is reasonable to conclude, should . . . alert[] [the defendant] to the consequences of his conduct." *Id.* at 490 (citing *United States v.*

Observations on the Bank Secrecy Act, 37 Cath. U.L. Rev. 465, 469-73 (1988).

The Bank Secrecy Act did not apply to bank customers prior to January 1987. Before that time individuals who "structured" transactions to avoid the $10,000 reporting threshold could be prosecuted only for willfully causing a financial institution to fail to file a CTR, 18 U.S.C. § 2(b), for knowingly and willfully concealing a material fact from the government, 18 U.S.C. § 1001, or for conspiracy, 18 U.S.C. § 371. *United States v. Scanio*, 900 F.2d 485, 488 (2d Cir. 1990). As part of the Anti-Drug Abuse Act of 1986, Congress enacted 31 U.S.C. § 5324.

Int'l Minerals & Chem. Corp., 402 U.S. 558, 564-65 (1971), and *United States v. Fierros*, 692 F.2d 1291, 1295 (9th Cir.), *cert. denied*, 462 U.S. 1120 (1983)). The court explained that, unlike other sections of the Bank Secrecy Act,[3] the purpose of section 5324(3) is to protect the government's right to information. To require proof that the defendant knew structuring to be illegal would be inconsistent with this goal. 900 F.2d at 491. *See also United States v. 316 Units of Municipal Securities*, 725 F.Supp. 172, 177-79 (S.D.N.Y. 1989) (civil forfeiture action).

[2] The Ratzlafs argue that the Supreme Court's recent decision in *Cheek v. United States*, 111 S.Ct. 604 (1991), overrules *Hoyland* and *Scanio*. *Cheek* was a criminal tax case. The defendant had been charged with willfully attempting to evade income taxes and with willfully failing to file tax returns, violations of 26 U.S.C. §§ 7201 and 7203. The Court held that willfully means the " 'voluntary, intentional violation of a known legal duty.' " 111 S.Ct. at 610 (citation omitted) (applying and discussing *United States v. Murdock*, 290 U.S. 389, 396 (1933); *United States v. Bishop*, 412 U.S. 346, 360 (1973); and *United States v. Pomponio*, 429 U.S. 10, 12 (1976) (per curiam)).

The Court explained its holding with reference to the tax laws:

---

[3] Specifically, the court addressed the distinction between "willful" as used in section 5324(3) and as employed in 31 U.S.C. § 5316, which proscribes an individual's failure to file "Currency and Monetary Instrument Reports." The *Scanio* court explained that section 5316 "requires individuals to report otherwise innocent transactions. . . . " 900 F.2d at 491.

> Willfulness, as construed by our prior decisions *in criminal tax cases*, requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally vi lated that duty. . . . [If] the issue is whether the defendant knew of the duty purportedly imposed by the . . . statute . . . he is accused of violating, . . . the Government [satisfies the knowledge component of the willfulness requirement if it] proves actual knowledge of the pertinent legal duty. . . . But carrying this burden requires negating a defendant's claim of ignorance of the law. . . . This is so because one cannot be aware that the law imposes a duty upon him and yet be ignorant of it, . . . or believe that the duty does not exist.

Id. at 610-11 (emphasis added).

The Court explained that Congress employed the term "willfully" in the criminal tax laws because their "*proliferation* . . . has sometimes made it difficult for the average citizen to *know and comprehend the extent of [their] duties and obligations*" under the tax laws. *Id.* at 609 (emphasis added). The Court noted that it had long construed "willfully" in the criminal tax statutes "as carving out an exception to the traditional rule" that "every person kn[ows] the law." *Id.* The Court does this, according to the *Cheek* majority, because the tax laws are "complex[]." *Id.*

[3] Four federal courts have answered the question whether *Cheek* requires the government to prove a structuring defendant knew that such activity is illegal. In *United States v. Dashney*, 937 F.2d 532 (10th Cir.), *cert.*

denied, 112 S.Ct. 402 (1991), the court rejected the notion that *Cheek* changes the *Hoyland* and *Scanio* conclusions:

> Criminal tax statutes are more analogous to . . . international currency reporting statutes . . . , since entirely innocent actions can lead to violations of the law. [But] Dashney's actions were anything but innocent, as he went to great lengths to avoid the filling out of CTRs in connection with his transactions.

Id. at 540 (internal citations omitted). *See also United States v. Nall*, 949 F.2d 301, 307 (10th Cir. 1991). In *United States v. Rogers*, 962 F.2d 342 (4th Cir. 1992), the court agreed with *Dashney*, holding that the *Cheek* exception is a narrow one. The court emphasized that *Cheek*'s rational is inapplicable to the structuring statute because it is not complex. *Id.* at 344. *See also United States v. Wollman*, 945 F.2d 79, 81 (4th Cir. 1991) (per curiam) (summarily affirming structuring conviction without addressing *Cheek*). Similarly, in *United States v. Brown*, 954 F.2d 1563 (11th Cir. 1992), the court refused to apply the *Cheek* exception to section 5324(3). "[Congress'] intent to facilitate prosecution of money launderers, stands in direct contrast to the . . . holding in *Cheek* that Congress intended to show special deference to Tax Code violators, [because] the tax laws [are complex]." *Id.* at 1569 n.2. *Cf. United States v. Donovan*, 1992 WL 18217, at *4, 1992 U.S. App. LEXIS 1535, *7-*9 (1st Cir., Feb. 6, 1992) (rejecting argument that *Cheek* requires proof of knowledge that failure to report currency transactions exceeding $10,000 is illegal and declaring that "the *Cheek* exception is restricted to tax crimes").

The result was different in *United States v. Aversa*, 762 F.Supp. 441 (D.N.H. 1991). There, the defendants were convicted of structuring after one of the men, Aversa, asked his investment partner and co-defendant Mento to help him conceal proceeds of a legal real estate transaction from his wife, with whom Aversa was engaged in a contentious divorce battle. Aversa asked Mento to allow him to deposit his portion of the real estate revenues in Mento's account and agreed to sign a letter to the IRS stating that the money deposited in Mento's account belonged to Aversa and that Aversa deposited less than $10,000 at a time to avoid arousing IRS suspicion of his income sources and level. The letter was provided to the IRS and Aversa subsequently engaged in transactions involving less than $10,000 on several occasions.

The New Hampshire district court ruled that Aversa could not be convicted of structuring because he did not know that structuring is illegal. The court reached this conclusion for three reasons. First, structuring can be "innocent" behavior in the sense that no concealment of illegal activity is intended or effected. 762 F. Supp. at 446. Second, the court rejected the *Scanio/Hoyland* definition of "willful" because it means that there would be no difference between the proscribed "willful" violations of section 5324 and non-willful violations of section 5324. *Id.* at 447-48. Finally, the court believed that *Cheek*'s reasoning applied because "[w]hile § 5322(a) may not be technically a criminal *tax* law it is certainly a criminal law related to taxation." *Id.* at 447 (emphasis in original). In addition, the court was convinced that the structuring laws are just as complex and "obscure" to the average citizen as are the tax laws. 762 F. Supp. at 447.

[4] We disagree with the *Aversa* court for several reasons. First, the currency structuring and reporting statutes are not "complex" in the sense that the *Cheek* Court used that term in referring to the Internal Revenue Code. The tax laws are "[o]ne of the most esoteric areas of the law . . . [,] replete with 'full-grown intricacies', [where] it is rare that a 'simple, direct statement of the law can be made without caveat.' " *Unites States v. Regan*, 937 F.2d 823, 827 (2d Cir.) (citation omitted), *modified*, 946 F.2d 188 (1991). The tax code's lengthy and complicated list of income sources that are and are not taxable and the conditions under which exemptions and deductions apply are in stark contrast to the *two* things outlawed by the money laundering statutes: failure of a financial institution to report transactions that exceed $10,000; and attempts, successful or unsuccessful, to prevent financial institutions from making the required reports by intentionally avoiding the $10,000 threshold in banking transactions.

[5] Second, we do not think the rule of lenity applies to the money laundering statutes. *Mens rea* is generally required to convict a person for a crime, and where a statute does not clearly specify the mental state required for conviction, courts construe the ambiguity in favor of the defendant. *See United States v. United States Gypsum Co.*, 438 U.S. 422, 437 (1978); *Rewis v. United States*, 401 U.S. 808, 812 (1971). But the language and history of the structuring statute is not ambiguous, and even a "strict" reading of the statute *supports*, not undercuts, the

government's proffered interpretation.[4] *Compare Liparota v. United States*, 471 U.S. 419, 424-25 & n.7 (1985) (noting ambiguity in statute where unclear whether "knowingly" applied to all elements of the offense).

[6] *Hoyland* and *Scanio* rest firmly upon Congress' intent in proscribing structuring. Before the enactment of section 5324(3), several courts, including this one, rejected attempts to impose any criminal liability for structuring financial transactions to avoid reporting requirements.[5] In 1986, Congress decided to close this apparent loophole in the government's information gathering scheme. *See Scanio*, 900 F.2d at 488 (citing S. Rep. No. 433, 99th Cong., 2d Sess. 22 (1986); H.R. Rep. No. 746, 99th Cong., 2d Sess. 18-20 (1986); *Hoyland*, 914 F.2d at 1129; *Dashney*, 937 F.2d at 537-38. When Congress effected this amendment to the money laundering and currency reporting statutes, it did not change the language of section 5322(a). In adding section 5324(3), Congress likewise did *not* specify that a greater "state of mind" would be required to secure a conviction under it than that

---

[4] *Morissette v. United States*, 342 U.S. 246, 261-63 (1952), casts no doubt on this proposition. There, the Court held that, as a general rule, *mens rea* must be assumed a requirement to convict under a statute that codifies a common law crime. Structuring, however, was not a criminal offense at common law. *Hoyland*, 914 F.2d at 1129.

[5] *See, e.g., United States v. Varbel*, 780 F.2d 758, 762 (9th Cir. 1986); *United States v. Anzalone*, 766 F.2d 676, 679-83 (1st Cir. 1985). *But see, e.g., United States v. Tobon-Builes*, 706 F.2d 1092, 1096-1101 (11th Cir. 1983).

established by section 5322. Thus, after the 1986 amendments, one could be prosecuted for violating section 5324(3) if he or she "willfully" structured transactions.[6]

The legislative history of the Anti-Drug Abuse Act clearly indicates that this interpretation of Congressional intent is correct:

> [A] person who converts $18,000 in currency to cashiers checks by purchasing two $9,000 cashier's checks at two different banks or on two different days with the specific intent that the participating bank or banks not be required to file [CTRs] for those transactions, would be subject to potential civil and criminal liability. A person conducting the same transactions for any other reasons . . . would not be subject to liability under the proposed amendment.

S. Rep. No. 433, 99th Cong., 2d Sess. 22 (1986) (quoted in *Dashney*, 937 F.2d at 538).[7]

---

[6] Congress' decision to add section 5324(3) to the United States Code also did not modify the traditional meaning of "willfulness." *viz.*, the defendant intended to do the act with which he is charged. *See Scanio*, 900 F.2d at 489 ("A requirement that the conduct be willful generally means no more than that the person charged with the duty knows what he is doing. It does not mean that, in addition, he must suppose he is breaking the law.") (quoting *American Surety Co. v. Sullivan*, 7 F.2d 605, 606 (2d Cir. 1925) (L. Hand, J.)).

[7] There is little indication that this interpretation of section 5324(3)'s history and purpose is incorrect. One report on the Anti-Drug Abuse Act included a proposal to change "willfully" in section 5322 to "knowingly." H.R. Rep. No. 855, 99th Cong., 2d Sess. 7, 27 (1986) (Report of House Judiciary Committee). The report noted that the term "willfully" has been ascribed different meanings in different statutory contexts and explained that

[7] The *Aversa* court's premise – that a defendant must know of the *reporting requirements* to be convicted of structuring – is therefore correct, but does not support the holding of that case. If a defendant knows that the bank must report a currency transaction and then intentionally acts in a way to prevent that, he has acted "willfully." One does not act "willfully" under section 5322 unless *both* parts of this equation are present. *See Dashney*, 937 F.2d at 539. There is no danger that someone who does *not* know of the reporting requirements could be convicted under that *mens rea* standard; nor is there any way that one who knows of the reporting requirements

---

its meaning in the money laundering statutes was an "actual awareness of the reporting requirement. . . . " *Id.* at 21-22. The Judiciary Committee Report recommended a change to the word "knowingly," explaining that this change would not be intended to change the meaning of the statute. *Id.* The House Committee on Banking, Finance and Urban Affairs issued a report similar to that of the Judiciary Committee. H.R. Rep. No. 746, 99th Cong., 2d Sess. 29 (1986). It stated that "[i]n the criminal context the term "knowingly" means with specific intent to commit a violation of the . . . Act" or "specific intent to commit a crime." *Id.* at 41. The report also suggested a change to the term "knowingly."

We agree with the Tenth Circuit that these committee reports are not helpful. First, the legislation discussed in the Judiciary Committee Report did not contain any prohibition of structuring. *Dashney*, 937 F.2d at 537 n.5. That means the Committee was not contemplating the appropriate state of mind when it was considering structuring. Second, the reports were submitted with bills rejected by Congress. Thus, although Congress did ultimately make changes in the money laundering laws, "it is [not] reasonable to assume that [Congress] adopted the intent of the[se] committee[s]," *Sutherland's Statutory Construction* § 48.06, at 332 (5th ed.).

but who *does not intend* to prevent such reporting can be convicted of structuring. No one can be convicted of "violating" section 5324(3) unless he or she knows of the reporting requirements *and* that he or she is doing something to prevent such reporting.

Finally, this case presents little risk that persons who engaged in "innocent" actions stand unjustly convicted of structuring. The Ratzlafs were aware of the reporting requirements, and the evidence indicates that the Ratzlafs apparently were seeking to avoid payment of their income taxes. The couple took no steps to insure that the IRS would be aware of the assets used to purchase the cashiers checks; denied that they earned money from gambling when in fact they had done so; denied any failure to report gambling income; and apparently hid large amounts of currency in or near their home. The Ratzlafs cannot be compared to an individual involved in perfectly ordinary business transactions who unconsciously breaks the currency laws. *Compare Aversa*, 762 F. Supp. at 446.

IV

Cheek did not overrule *Hoyland*. We join the Fourth, Tenth, and Eleventh Circuits in reaching this holding. Accordingly, the instructions given by the district court were not improper. The defendants' convictions are therefore AFFIRMED.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

April 26, 1993

Mr. John Duncan Ryan
121 S.W. Morrison Street
Suite 800
Portland, OR 97204

Re: Waldemar Ratzlaf and Loretta Ratzlaf v. United States
No. 92-1196

Dear Mr. Ryan:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is granted.

Very truly yours,

/s/ William K. Suter
William K. Suter, Clerk